

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #00-112

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 12, 2000, the water pollution control board (board) conducted the first public hearing/board meeting for the development of new rules 327 IAC 5-16 through 327 IAC 5-21 and the repeal of existing rules 327 IAC 5-11 through 327 IAC 5-15 concerning industrial wastewater pretreatment. Comments were made by the following parties:

Tom Anderson for Save the Dunes Council (SDC)

Patrick Bennett for the Indiana Manufacturers Association (IMA)

Jane Dustin for the Indiana Chapter of the Izaak Walton League (JD)

Tom Dustin for the Indiana Chapter of the Izaak Walton League (TD)

Bill Hayden for the Hoosier Chapter of the Sierra Club (SC)

Glenn Pratt (GP)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The Indiana Manufacturers Association appreciates the hard work by IDEM on the pretreatment rules but has comments on two (2) areas where the state's draft rules are inconsistent with the federal pretreatment regulation. Specifically, 327 IAC 5-18-2(a)(10) is an extra requirement not contained in the federal regulation, and 327 IAC 5-18-5(a)(2) requires that an application requesting a variance to categorical standards must be submitted within one hundred eighty (180) days after the effective date of the categorical pretreatment standard as promulgated by EPA which differs from the more restrictive federal regulation at 40 CFR 403.1-3(g)(2) requiring that the variance application be submitted no later than one hundred eighty (180) days after the publication of the standard in the Federal Register. (IMA)

Response: IDEM agrees that 327 IAC 5-18-2(a)(10) is overly broad and could have the unintended effect of applying NPDES limits at any point in a collection system; therefore, this subdivision will be removed from the rule before consideration of final adoption. The effective date of a categorical standard can be as much as three (3) years after the date it is published in the Federal Register. The Indiana pretreatment rule at 327 IAC 5-18-5(a)(2) will be modified to match the similar requirement of

the federal pretreatment rules so as to prevent the possibility of untimely application being made by an industry.

Comment: Indiana is probably one (1) of the last states to apply for delegation to conduct its own industrial wastewater pretreatment program. The major concern about this much needed program is will there be adequate resources to operate the program. It seems that whenever Indiana undertakes a new program no additional staff or resources are made available for operating the program with the result being, for example, that Indiana has one (1) of the most abysmal water quality monitoring programs in the nation with insufficient development of water quality data upon which to be able to base permits and determine waste load allocations. (GP, JD)

Response: IDEM is committed to seeking federal delegation for the pretreatment program. IDEM is also committed to continue to enhance the current program and will devote appropriate resources to its implementation. The comments on the state's water quality monitoring program were unsupported and are unfounded.

Comment: Preliminary adoption of the state's industrial pretreatment rules should be conditioned upon IDEM having the resources necessary to be able to thoroughly conduct the program including being able to respond immediately to a community like Anderson and provide adequate technical assistance or arrange for the hiring of consultants to prevent a recurrence of a fish kill such as the state experienced this past winter in the White River. Regulated entities have agreed to pay higher permit fees which are accumulating but not being put to their intended use in the programs for which the funds are collected. Staffing recommendations have been previously made by the Environmental Quality Service Council. These funds and the suggested staffing levels if put into the affected programs could make a substantial difference in IDEM's ability to do the work it is supposed to do. If the resources necessary to properly and thoroughly conduct the pretreatment program are not available, then the state should not apply for delegation and should allow EPA to continue to operate the program in Indiana. (GP)

Response: IDEM is committed to adequately staff the pretreatment section to continue to properly implement the state pretreatment program. IDEM is properly using all available funding for its intended appropriate use.

Comment: The state's industrial wastewater pretreatment rules need further refinement before preliminary adoption. (JD)

Response: IDEM is continuing to work with interested persons and will recommend any necessary refinements prior to final adoption.

Comment: It appears that comments, especially those given at hearings, are not having responses supplied. (JD)

Response: All comments that IDEM receives during one (1) of a rule's several official comment periods as well as those made at public hearings are responded to by IDEM. Comments made at the first public hearing to consider a rule for preliminary adoption are summarized and published in the Indiana Register with responses from IDEM when the rule is published as a proposed rule.

Comment: The description of the pretreatment program gives insufficient emphasis to the objective of producing a nontoxic, high-quality biosolid, land applicable sludge. In the concern of pretreatment sludge, who is the approval authority and who is the control authority? Any intent to handle pretreatment sludge by way of a nonrule policy would be inappropriate. (JD)

Response: IDEM does not intend to produce a nonrule policy concerning pretreatment sludge. Sludges generated from pretreatment activities are specific to the operation of the facilities producing them and are regulated by land application regulations as well as hazardous waste regulations. The intent of the pretreatment rules is to protect the POTW sludge from materials that may interfere with the POTW chosen handling process.

Comment: It is essential that all wastewater treatment plant customers be screened at regular intervals to assure that every input to the wastewater going to the POTW will not interfere or pass through the treatment works or lodge in sludge. All wastewater input into a POTW is significant; therefore, it is disturbing to see the words "significant industrial discharge" and "significant noncompliance" being used as if each industrial discharge and incidence of noncompliance is not significant. (JD)

Response: In the context of the pretreatment rules, these two (2) terms are specifically defined and are not intended to imply that certain industrial discharges are not significant. Furthermore, individual communities may choose to regulate industrial discharges that may potentially present a threat to the POTW even if such discharge does not qualify under the pretreatment rules definition of the terms in question.

Comment: Can these pretreatment rules and the current Indiana industrial wastewater pretreatment program really find and recognize a little known chemical or compound that may break down into something extremely harmful to water quality and aquatic life before an industrial discharger sends the chemical or compound to the POTW? (JD)

Response: The pretreatment rules give authority to a community to investigate, regulate, and set limits for chemicals used in the process and treatment of a facility's wastewater. These rules give the local community the tools for regulating such harmful compounds. The identification of such harmful compounds, however, will continue as an ongoing cooperative effort between the industry, the local community, the state, and the federal government.

Comment: It is recommended that the Water Pollution Control Board, itself, and not IDEM investigate the staffing of the Office of Water Management to determine where the staff is inadequate in number and training and make recommendations to the commissioner, the governor, the chairs of the House Ways and Means and Senate Finance committees, and the Environmental Quality Service Council. The permit fee legislation that was passed in 1994 provided a lot more money than has been used to provide staff at IDEM, and there is a considerable balance in that account that should be used as intended rather than to fuel political bragging rights about how big is the state surplus created by the party in power. It is frustrating to see IDEM be expected to undertake more activities with no increase in staff. Things just don't get done or don't get accomplished as expeditiously as they should. For example, stream surveillance has gone from being done every three (3) years to every (5) years. (SC)

Response: At issue in this hearing is consideration of preliminary adoption of the industrial wastewater

pretreatment rules that have been drafted to be consistent with the federal requirements and that will allow IDEM to request delegation of the state pretreatment program from EPA. Sufficient staffing to conduct the program is core to the interests of both IDEM and EPA. Many discussions in different forums have been held regarding resources and funding at IDEM. Contrary to the comment presented at hearing, there is no source of dedicated funds that IDEM is diverting back to the general fund or to some other purpose. IDEM is spending all the money that is available to it for water quality. Preliminary discussions have been held between IDEM and EPA about what is needed for the state to receive delegation for the pretreatment program, and among the discussion issues has been a review of IDEM pretreatment staff. EPA has been comfortable with IDEM's resources allotted to the pretreatment program.

Comment: Good intentions sound very persuasive, but much more in the way of concrete demonstration of ability to meet requirements is needed before a pretreatment discharger is allowed to connect to a POTW. (TD)

Response: IDEM concurs. These pretreatment rules allow for local authority to regulate any form of industrial discharges into the community's collection system and to require a demonstration of the ability to meet the local requirement through baseline monitoring and characterization of the industrial facility's discharge. The POTW can require compliance with the pretreatment regulations, ordinance limits, and any other imposed requirement at all times.

Comment: The Save the Dunes Council participated in 1996 in the lieutenant governor's task force concerning IDEM staffing. At that time Save the Dunes Council thought that a staff of one thousand two hundred forty (1240) was insufficient for IDEM. Staff today at IDEM is much less and there is serious concern about the ability of the department to continue to take on a greater burden. Earlier in this board meeting there has been discussion about the amount of rulemaking required of the Office of Water Management by the recent legislative mandates. Statements have been made that the Office of Water Management has spent so much on investigation of the White River fish kill that there is no more money available in the present fiscal year for mandated total maximum daily load requirements in northern Indiana. For these reasons, the Save the Dunes Council is opposed to preliminary adoption of the industrial wastewater pretreatment rules. (SDC)

Response: IDEM does not believe that adoption of the pretreatment rules and receipt of program delegation constitutes an additional burden. Indiana has had pretreatment rules in place for some time that are being updated through the current rulemaking. The state's pretreatment staff has been performing the activities required by a pretreatment program such as conducting inspections and audits and issuing pretreatment permits to industries in nondelegated communities. Adoption of the pretreatment rules is a condition for delegation by EPA. This delegation will give Indiana primacy in enforcement actions and will eliminate the need and burden on pretreatment industries of reporting both to the EPA and the state. EPA will continue to have authority to enforce the federal pretreatment rules. IDEM is also enhancing its pretreatment program by devoting additional resources to it.